WOMEN IN LAW IN SOUTHERN AFRICA
RESEARCH AND EDUCATION TRUST
DR THERESA MOYO
SYLIVA CHIRAWU
AGATHA DODO
SITHEMBISO SITHOLE
JEENPHER DUBE
ARCHIBAIL CHIKOHWA
versus
DINAH MANDAZA

HIGH COURT OF ZIMBABWE
HUNGWE J.
HARARE 17 December, 2003 and 18 February, 2004

Urgent Chamber Application

HUNGWE J: This matter came under a certificate of urgency.

The urgency arose out of the following events. The first and second applicants filed for a provisional order in terms of which bank account held by the first applicant ("WLSA") were frozen until new signatories to those accounts were appointed - see *Women & Law in Southern Africa Research and Education Trust and 2 Others* v *DINAH MANDAZA & 7 Others* HH 71/03. On the return day the mater was argued before CHINHENGO J who, on 26 November 2003 rendered judgment which judgment was only available on 6 December 2003. He discharged the provisional order in HH 202/03 on the basis that had the allegations set out in HH 71-03 been true, then there would have been no basis for the applicants seeking an order which they obtained in HH 98/03. The point made there is this. In HH 71/03 the lst and 2nd applicants had obtained an order effectively barring respondent from transacting any business on the accounts held by lst applicant ("WLSA"). Having obtained such an order the same parties approached this court seeking another order whose effect was to join another signatory to the WLSA bank

accounts to the existing panel which comprised respondent and her appointee Laura Harrison. There has been no explanation as to the allegation that respondent was abusing WLSA funds which was the basis upon which the earlier order had been obtained. The learned judged gave other reasons for his order discharging the provisional order.

In the present application the following is important to note -

1. Elizabeth Shongwe who claimed to be chairperson and Trustee in HH 202/03 is not part of this new application.
2. One Theresa Moyo and virtually all the staff in the employ of WLSA filed this application.
3. They all claim to have been despoiled by respondent and seek an order confirming the *status quo ante*.

The issue before me is in my view whether respondent is entitled to lock out everyone from the premises of WLSA.

Theresa Moyo, the trustee, sets out the position thus.

On 10 December, 2003 the respondent caused guards from Beecon Security to physically bar all staff and her from entering the premises at 16 Lawson Avenue, Milton Park Harare. Up to that date, they had enjoyed peaceful and undisturbed occupation and in possession of the said premises. She says respondent had no right to act in this way unless she was armed with a lawful order of court to that effect.

The respondent raised various reasons for her action in her opposing affidavit. She challenged the *locus standi* of Theresa Moyo and the rest of the applicants who she says only enjoyed a right of entry to the premises at the absolute discretion of WLSA

their employer.

As against the 3rd applicant, respondent points to a letter she addressed to her suspending her from employment with WLSA way back in February 2003. Her status is pending determination in the Labour Court. As such she has no cause of complaint and is not entitled to the relief she seeks against respondent. Similarly 5th respondent's *locus standi* is challenged on the further basis that respondent had addressed to her a letter of suspension on 9 December, 2003. As the matter of suspension is pending in the appropriate forum she has no *locus standi* to mount this application. At the hearing, the applicants applied to file a supplementary affidavit as well as an amended draft interim order.

The reasons for this new position was that as the respondent contended that an appeal against the order of CHINHENGO J did not suspend that order, it was therefore necessary to seek a new order interdicting respondent from transacting on WLSA accounts.

The matter before me is two fold. The original papers were confined to an order restoring the *status quo ante*. That order was being sought by the *spoliatus* as against the spoliator. It was confined to maintaining the respective parties' previous positions. It did not address the respective rights on the merits. It needed not to. Spoliation is predicated on the need to discourage people taking the law into their own hands. Thus, it is said, theoretically, a thief ought to succeed should the owner resort to self help and indicates his stolen property without recourse to due process. *Mandamus van spolie* protects possession. In order to succeed an applicant for an order *mandamus van spolie* only

needs to show firstly that he was in possession of the thing and secondly that he was unlawfully deprived of such a possession.

The amended papers brought into the focus the interests of WLSA as a legal personae in the sense that it can sue and be sued in its own right. As a trust it acts through the medium of its trustees. Theresa Moyo on behalf of the Trust expresses the fear of financial ruin that might befall the Trust should an interim interdict not be granted. The nature of the relief sought in the Amended draft order is such as would preserve the *status quo* until such time each party's rights are defined and pronounced.

I am aware that the status of each of the applicants except WLSA is challenged and that there has been no answering affidavit in the opposing affidavit. I am also aware that the decision relied upon by the respondent for her action at Lawson Avenue is under appeal.

At this point I have to decide whether the effect of that appeal is to suspend the judgment appealed against and thereby revive the provisional order of SMITH J in HC 71/03.

It appears settled now, that the granting of an interim relief as an adjunct to a rule *nisi* calling upon a party to show cause why an interdict should not be granted is well known. The purpose of such an order is to ensure that pending a full investigation of the matter by the Court, the wrong complained of should not be committed and continued. Such a provision of an interim interdict is always intended to operate pending the decision of the application on the return day of the rule *nisi*.

When therefore the rule *nisi* is discharged the interim relief granted comes to an

end. See: *A B Lines (Pty) Ltd* v *Cape Tex Engineering Works (Pty) Ltd* 1968(2) SA 535; *Ismail* v *Keshajee* 1967(1) SA 684 at 688; *Siaipoulos* v *Tzerefos* 1979(3) SA 119.

In terms of common law the noting of an appeal suspends the judgment appealed. But what effect does it have where, as here, the order appealed was one discharging a provisional order?

It seems to me that the proper approach for this court to take is that adopted by the South African Courts (Uniform Rules of Court Rule 49).

An inter-relation given to that Rule, in the case law indicates that unless a fresh application for an interim interdict is made, the appeal does not revive a discharged provisional order or interim interdict.

Applicants have urged the Court to issue a fresh interim interdict whose affect would be the same as that which has been discharged on the basis that the respondent's actions amount to spoliation. To my mind the applicants are entitled to the order they seek. No matter how justified at law respondent believes she is, she certainly is not entitled to take the law into her own hands. This is what she did.

Pending the determination of the appeal, the applicants are granted the interim relief as appears in the amended draft.

Costs to be costs in the cause.

Coghlan Welsh & Guest, applicant's legal practitioners
Honey & Blanckenberg, respondent's legal practitioners